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An Agricultural Law Research Article

A Primer for the Urban Attorney on Idaho Farm and Ranch Law

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A PRIMER FOR THE URBAN ATTORNEY ON IDAHO FARM AND RANCH LAW

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The time has passed when farmers and ranchers in Idaho could handle their legal affairs with a minimum of legal consultation, advice and work from qualified practitioners. Statutory law has invaded the common law sanctuary which previously governed the rights and responsibilities of farm clients. In addition regulatory agencies and commissions have outlined a new framework with reference to which Idaho farmers and ranchers must now proceed. The old times are gone for good.

There is no doubt that with the addition of statutory law, both state and federal, to agricultural affairs,¹ the challenge of providing adequate and sometimes necessary "expert" legal counsel has increased immensely. As more attorneys move to the city, more rural citizens go there with their legal problems. This circumstance forces the urban lawyer to master the complex area of agricultural law with its attendant problems.

Considerations of environmental protection now affect many decisions that farmers make, for example, animal preservation claims made by wildlife groups conflict with the rancher's development of his herds, and protests against the use of pesticides and herbicides in the field by consumer groups may conflict with the farmer's practices. Moreover, agribusiness and vertical integration in the farming industry have made definite inroads into the importance of the family farm. The farmer is also affected by changes in the areas of zoning, commercial transactions, marketing produce, labor, irrigation and water rights.

In light of the increasing legal problems of farmers and ranchers, the following article is written to acquaint the urban attorney with the rudiments of agricultural law in this modern age. Though this treatise should be a starting point concerning what law must be considered by the practitioner whose work is extending beyond the city limits, it is not meant to be an exhaustive treatment of the agricultural law field.

Buying, Selling, Leasing. When a client says he is desirous of buying, selling or leasing a farm business, he is speaking of a transfer of many assets,

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1. 3 AM. JUR. 2d *Agriculture* §§ 1-65 (1962), 3 C.J.S. *Agriculture* §§ 1-178 (1973). See Cook v. Massey, 38 Idaho 264, 220 P. 1088 (1923) (gives breadth of term "agricultural pursuit").

not merely of a single unit called a "farm."² A sale, for example, may include a series of sales.

Farmland may be sold with growing crops or with buildings, fences, trees, vines, water wells, irrigation equipment, or other improvements. Movable machinery, implements, and equipment may also be included in the sale.³

A number of factors affect the value of the farm or ranch property which, in turn, undoubtedly affect the possibility of getting a loan. Among the considerations which affect the value and should be seriously analyzed are: location, market for crops in the vicinity, pasture, range, weather, water sources, irrigation, land which is or could be cultivated, house and out-buildings, motor vehicles, animals, implements, trees, vines, shrubs, and fences.⁴

As in non-rural real estate transactions, there are some standard documents for conveyances to complete the agreement. However, the attorney's insight regarding appraisal methods,⁵ proper financing⁶ and applicable income tax laws⁷ are the initial components of a well drafted contract and of a well-protected client.

The farm lease, too, calls for considerations which are not usual for the urban lawyer: crop insurance, husbandry, oil, gas, minerals, availability of hunting, irrigation, timber rights, crop mortgages, livestock shares, and the

2. We are assuming your client is a person who, for tax purposes, wishes to be classified as a farmer, one whose motive in the pursuit of agricultural activity-cultivating, operating, managing-is profit. Treas. Reg. §§ 1.61-1.64 (1957). The profit motive has been considered absent where (1) recreational, social and aesthetic facilities are maintained but are not commensurate with the profit expectations of the farm; (2) there are continuous losses over a long period of time; (3) unprofitable animals are maintained; (4) the reason for the farm is a non-business interest, e.g. locating the farm next to a recreational area (lake, golf course, country club). The profit motive has been found where (1) expenditures are reasonable when compared with receipts; (2) the taxpayer is personally qualified to engage in farming; (3) there is a reasonable expectation of profit; (4) qualified personnel work on the land; (5) facilities for personal living and recreation are commensurate with the profit expected from the farming activity. H. HALSTEAD, FEDERAL INCOME TAXATION OF FARMERS, 7-10 (1961). (This is an excellent tax treatise for this area of law and still very useful for current application. It uses a case method approach in its discussion of accounting methods, records, returns, income, and business deductions.)

3. CALIFORNIA STATE BAR CONTINUING LEGAL EDUCATION PROGRAM, CALIFORNIA FARM AND RANCH LAW, § 14.2 (1967) [hereinafter cited as CAL. F & R].

4. J. CARTWRIGHT, FARM AND RANCH REAL ESTATE LAW §§ 74-90 (1972) [hereinafter cited as CARTWRIGHT].

5. CAL. F & R *supra* note 3, §§ 14.14-14.15; CARTWRIGHT *supra* note 4, §§ 91-93.

6. Farm loans can be secured from a number of sources: Federal Land Banks, commercial banks, insurance companies, farm mortgage companies, private lenders. The Farm Credit Administration in Washington, D.C., which directs and controls the Federal Farm Loan Act, was created specifically to provide loans on farm lands and to assist in getting loans through local farm cooperatives or land bank associations. 7 U.S.C. § 1006b (1970) (farm tenant purchase loans); 12 U.S.C. §§ 636-1148 (1970) (farm credit administration); 42 U.S.C. §§ 1471-1484 (1970) (loans for farm buildings); CAL. F & R *supra* note 3, § 2.1 (Farm Credit Administration).

7. H. HALSTEAD, *supra* note 2; CAL. F & R *supra* note 3, at 495-621.

possibility of cash or crop share rent. There are excellent discussions in other articles of the pertinent matters and forms for farm leases.⁸ Suffice it to say that caution should be taken and advice of knowledgeable counsel solicited by the practitioner venturing into this area.

Labor. The farmer must remain attentive to the various areas of labor law when he contemplates the hiring and firing of employees. The farmer should also be aware of the immigration restrictions which are applied to alien migrant workers.

Wage discrimination,⁹ collective bargaining,¹⁰ farm laborers' liens,¹¹ immigration¹² and employment security¹³ should concern your client in the labor relations area.

Equipment. Farm vehicles and implements will, of course, play important roles in the successful drive for a profitable farm venture. Regulations for warning devices, lamps, signals, reflectors, weight, speed and tires are enforced now more than ever.¹⁴ The federal Occupational Safety and Health Act¹⁵ applies to farms as well as to other businesses. Seat belts and roll-bars will be required for tractors effective October 25, 1976.¹⁶ (The whole OSHA program, because of such things as the tractor regulations, has been attacked by Idaho farm groups which have advanced two repeal resolutions.¹⁷ However, there is much more likelihood of amendment than repeal so soon after its passage in 1970.)

The Uniform Commercial Code should be consulted when equipment is

8. CAL. F & R *supra* note 3, §§ 1.1-1.93; CARTWRIGHT *supra* note 4, §§ 41-70.

9. Fair Labor Standards Act of 1949, 29 U.S.C. § 206 (1970) (minimum wage); 29 U.S.C. § 216b (1970) (unpaid overtime); 29 U.S.C. § 631 (1970) (age discrimination); IDAHO CODE §§ 44-1501 to -1510 (Supp. 1975) (minimum wage); IDAHO CODE §§ 44-1601 to -1606 (Supp. 1975) (age discrimination); IDAHO CODE §§ 44-1701 to -1704 (Supp. 1975) (sex discrimination).

10. 29 U.S.C. §§ 151-160 (1970); IDAHO CODE § 44-701 (1948).

11. IDAHO CODE § 45-301 (Supp. 1975).

12. The Immigration and Nationality Act, 8 U.S.C. § 1101 (1970) (labor certification). Though the requirements of proper employment of foreign nationals are clear, it has been estimated that 2,500 illegal aliens worked in Idaho during 1974-75. Idaho Statesman, June 16, 1975, § A at 1, col. 6.

13. IDAHO CODE § 72-212 (Supp. 1975) (Idaho's workmen's compensation law exempts, "agricultural pursuits" from its coverage); IDAHO CODE § 72-213 (1948) (allows the employer in an exempt occupation to elect coverage under the workmen's compensation law). See 20 WAYNE L. REV. 179 (1973).

14. Idaho Statesman, Feb. 28, 1972, § B at 1, col. 4.

15. 29 U.S.C. §§ 651-678 (1970). See Glasser, *The Occupational Safety and Health Act*, 20 WAYNE L. REV. 987 (1974); 20 WAYNE L. REV. 999 (1974).

16. Idaho Statesman, June 3, 1975, § B at 11, col. 1.

17. Idaho Statesman, June 2, 1975, § B at 22, col. 1 (full statements of the Idaho State Farm Bureau and the Idaho National Farmers Organization are included in an overview of OSHA safety standards).

used as collateral for farm equipment loans.¹⁸ Security interests in after-acquired property may affect the terms of the loan.¹⁹

Water. Proper irrigation²⁰ and drainage²¹ is a sine qua non of any agricultural operation. Whether the client is concerned with appropriation of water²² or artificial rainfall,²³ there are laws which cover the proper methods for getting and retaining water.²⁴ Environmental controls also enter into the picture, e.g. the dumping of wastes into water resources is controlled.²⁵

Protecting the Farm Product. The extensiveness of state and federal controls covering virtually every aspect of commercial farming is evident in present legislation and agency regulations.²⁶ Fertilizing,²⁷ applying pesticides and herbicides,²⁸ destroying noxious weeds,²⁹ fencing,³⁰ killing predatory animals,³¹ branding animals,³² marketing farm products,³³ advertising,³⁴ us-

18. See Coates, *Financing the Farmer*, 20 THE PRACTICAL LAWYER 13 (1974).

19. *Id.* at 50.

20. IDAHO CODE §§ 43-101 to -2112 (1948).

21. IDAHO CODE §§ 42-2801 to -2823, -2901 to -2978 (1948).

22. IDAHO CONST. art. 15, §§ 3-6; IDAHO CODE §§ 42-101 to -618 (1948).

23. IDAHO CODE §§ 22-3201 to -3202 (1948).

24. IDAHO CODE §§ 42-101 to -3212 (1948) (distribution of waters among appropriators, maintenance and repair of ditches, conservation for irrigation purposes, rates, flood control and sewer districts).

25. Environmental Protection and Health Act of 1972, IDAHO CODE §§ 39-101 to -136 (Supp. 1975) (regulation of air, water and solid waste emissions and disposal). See Annot., 32 A.L.R.3d 215 (1970) (anti-water pollution statutes); Annot., 48 A.L.R.3d 326 (1973) (air pollution control).

26. Idaho State Department of Agricultural Rules (Dec. 1, 1974) (475 pages of regulations governing everything from Actinomyces (lump jaw) and artificial insemination to cherry fruit flies, sheep and veterinarians). IDAHO CODE §§ 22-101 to -3716, 25-101 to -3007, 37-101 to -2610, 67-101 to -6305, 69-101 to -403 (1948) are the code sections to which the regulations pertain.

27. IDAHO CODE §§ 22-601 to -622 (1948).

28. IDAHO CODE §§ 22-2208 to -2232, 22-3401 to -3416 (Supp. 1975) (commercial sprayers, pesticides); see Annot., 37 A.L.R.3d 833 (1971) (liability from injury caused by crop dusting).

29. IDAHO CODE §§ 22-2441 to -2462 (Supp. 1975).

30. IDAHO CODE §§ 25-2405, 35-301 to -305, 62-1201 to -1207 (1948).

31. See Report on Coyote Damage and Control: Cattle, Sheep, and Goats, 40 Fed. Reg. 30-139 (July 17, 1975). See also Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 135-135K (1971), with regard to use of controversial M-44 device, which delivers sodium cyanide, for predator control.

32. IDAHO CODE §§ 25-1101 to -1111, 25-1201 to -1215 (1948).

33. IDAHO CODE §§ 22-502 to -503 (Supp. 1975), §§ 22-701 to -1921, 22-2301 to -2312, 22-2601 to -2628, 22-2801 to -3318 (1948) (marketing produce); IDAHO CODE §§ 25-1720 to -1737 (Supp. 1975) (marketing livestock); IDAHO CODE §§ 25-3101 to -3123 (Supp. 1975) (marketing dairy products). See Agricultural Marketing Act, 12 U.S.C. § 1141 (1970); Annot., 90 A.L.R.2d 1142 (1963); CAL. F & R, *supra* note 3; CARTWRIGHT, *supra* note 4.

34. IDAHO CODE § 22-1208 (Supp. 1975) (by potato commission); § 22-2804 (Supp. 1975) (by honey commission); § 22-2918 (1948) (by bean commission); § 22-3005 (1948) (by prune commission); § 22-3105 (Supp. 1975) (by hop grower's commission); § 22-3309 (1948) (by wheat commission); § 22-3510 (Supp. 1975) (by pea and lentil commission); § 25-3111 (Supp. 1975) (by dairy products commission).

ing warehouses and elevators,³⁵ conserving soils,³⁶ grazing,³⁷ and managing feedlots³⁸ are among the aspects of improving, developing and protecting the production of farm goods and livestock reached by the law.

Agribusiness. The question, "Who's Really Running the Small or Family Farm?" has been asked more and more frequently in recent years because non-farmers are making significant inroads into the business of agriculture. To stay competitive, small farmers are becoming more involved with credit, leases, production and cooperative agreements. They are also seeking assistance from government programs. Because large portions of many different markets are becoming controlled by conglomerate non-farm corporations, small farmers must adjust.

Since World War II, the number of farms in America has declined from 5,900,000 to 2,900,000.³⁹ The "field-to-store" trend, whereby one company handles the product from the earliest stages of growth to delivery at the local supermarket, has become a real problem for the continued economic viability of the small farm which is forced to the bottom of the "food chain" and relegated to supplying cheap raw materials to the "giants": for example, to Ralston Purina, Stokely-Van Camp, and even to Dow Chemical, Boeing and Tenneco.⁴⁰

To help small farms stay afloat Secretary of Agriculture Earl Butz ordered a research project at the outset of his administration to "initiate a crash program on the marketing problems of family farms, and to investigate ways to improve the tax structure for family farms."⁴¹ Yet, the small farms keep disappearing and the conglomerate competition gets tougher.⁴² No program has been instituted to reduce and further prevent market monopolizations by non-farm corporations.⁴³

35. IDAHO CODE §§ 69-201 to -328 (1948).

36. IDAHO CODE §§ 22-2716 to 2719.

37. IDAHO CODE §§ 25-2401 to -2409, 57-1201, 57-1203 to -1204 (Supp. 1975).

38. IDAHO CODE §§ 39-107 to -108 (Supp. 1975).

39. Senator Adlai Stevenson, *Who Owns America?*, St. Louis Post-Dispatch, Jan. 28, 1972, § 2B, col. 3.

40. Kotz, *Butz Symbolizes Growing Power of Agribusiness*, Idaho Statesman, Dec. 1, 1971, § 5A, col. 4. On December 3, 1971, the former Purdue University Dean of Agriculture, Earl Butz, became United States Secretary of Agriculture by a 51-44 Senate vote. Idaho Senator Len Jordan voted for; Idaho Senator Frank Church voted against on the basis of Butz's ties to big farm business. Church was quoted as saying, "I look upon the problems facing the farmer as an urgent shortcoming we must remedy before the family farm disappears, and along with it the wholesome character of rural life in America." *Id.*

41. Idaho Statesman, Jan. 13, 1972, § A at 3, col. 1. Cf. *How to Keep the Family on the Farm*, 35 MONTANA L. REV. 88 (1974); Bravenic, *Tax Planning to Control Recapture of Farm Losses*, 42 J. TAXATION 312 (1975).

42. Kester, *Small Farms Disappearing*, St. Louis Post-Dispatch, Dec. 3, 1971, § 9B, col. 1, documenting a 20 million person, three million farm decline since 1940. The average size of those farms remaining today, however, are more than double the 150-acre average of 1940.

43. Wershow and Juergensmeyer, *Agriculture and Changing Legal Concepts in an Ur-*

Counsel for the small farmer should thus know of the tools which could help his client compete in today's market. The decision to incorporate,⁴⁴ create partnerships and joint ventures⁴⁵ of even relatively small farms may well be the answer to stemming early retirement of individual initiative. Likewise, the formation of cooperative associations has given protection to small farming interests.⁴⁶ Finally, knowledge of applicable antitrust⁴⁷ and marketing⁴⁸ laws can be used as last resorts to help break up anti-competitive agribusiness chains.

Estate Planning. The farmer and rancher have critical and unique economic problems because of their properties, income arrangements and expenditures. An understanding of the financial affairs of the agricultural client, therefore, is a necessary precedent to good estate tax planning and administration.

The use of gifts, trusts, valuation, life estates and lifetime liquidity is different than in non-rural estates. This difference results from the farm-ranch economic picture.⁴⁹ Understanding how the agricultural business runs is as important to starting a farm or ranch business⁵⁰ as to winding them up.

The continuous inflation of the value of all types of property has added to the number of people who require thoughtful and sophisticated planning. Farmers and ranchers have experienced inflation to a dramatic degree, particularly in recent months, as land values have gone up together with the sharply increased prices for livestock, grains, and other agricultural products. . . .

Consequently, the death of the typical farmer or rancher could result in substantial estate taxes that might, especially after the subsequent demise of the spouse, force the dissolution of the producing unit. . . .

In addition to the normal reasons for estate tax minimization, these

hanized Society, 27 U. FLA. L. REV. 78 (1974); *Trust Busting on Farms*, 61 VA. L. REV. 341 (1975).

44. CAL. F & R, *supra* note 3, at 555.

45. *Id.*

46. *See* note 34 *supra*.

47. Sherman Anti-Trust Act of 1890, 15 U.S.C. §§ 1-7 (1970); IDAHO CODE §§ 48-101 to -117 (1948). *See also* IDAHO STATE BAR COMMITTEE ON CONTINUING LEGAL EDUCATION, ANTI-TRUST FOR THE GENERAL PRACTITIONER (1974), which outlines restrictions on competition, collaboration, legitimate single-farm market power, horizontal and composite mergers, price discrimination, "anti-competitive" effect, and the problems of bringing and trying an anti-trust action.

48. *See* note 44 *supra*.

49. Kelley, *Estate Planning for Farmers and Ranchers*, 20 THE PRACTICAL LAWYER 13 (1974); CAL. F & R, *supra* note 3, at 589-621. *See also* IDAHO STATE BAR COMMITTEE ON CONTINUING LEGAL EDUCATION, ESTATE PLANNING FOR THE FARMER AND RANCHER (1975), a problem solving guidebook with model estate plans involving life insurance, incorporation, gifts, and trusts, with tax consequences in mind, for four different but representative farming families.

50. Kelley, *supra* note 49.

clients find tax planning assistance indispensable to the preservation of personal objectives toward which they have struggled for a lifetime.⁵¹

Urban Expansion. As a final unhappy note to this primer, the urban attorney may soon be more concerned with zoning and planning when counseling the Idaho farmer and rancher than with any of the above areas. Farmland near Boise, Idaho Falls, Twin Falls, Nampa-Caldwell and other Idaho cities is being increasingly subdivided. For example, the Department of Commerce's most recent five-year survey (1969) reports that in Ada County the number of farms declined by 143.⁵²

Urban sprawl means a bonanza to some farmers who wish to sell their lands for new industrial, residential and business developments. Zoning and planning then become major considerations for attorneys handling the burst of growth in and around Idaho cities and towns.⁵³ Thus, this article has come full circle — back to selling the land.

51. *Id.*

52. Idaho Statesman, Jan. 4, 1975, §C at 12, col. 1.

53. Sperry Rand Agriculture Newsletter, Oct. 30, 1971, § A at 4, col. 3; Idaho Statesman, Dec. 12, 1971, § B at 5, col. 1. For applicable and recently enacted Idaho statutes on planning and zoning, see IDAHO CODE §§ 67-6501 to -6529 (Supp. 1975).